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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-989]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain frozen warmwater shrimp from the People's Republic of China (PRC). For information on the estimated subsidy rates, *see* the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: [Insert Date of Publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: John Conniff or Eric Greynolds, Office 8, Import Administration, U.S. Department of Commerce, Room CC116, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-1109 or 202-482-6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the Coalition of Gulf Shrimp Industries (Petitioner).¹ This investigation covers 29 government programs. The mandatory respondent in this investigation is Zhanjiang Guolian Aquatic Products, Co., Ltd. (Guolian), Zhanjiang Guolian Feed Co., Ltd. (Guolian Feed), Zhanjiang Guolian Aquatic Fry Technology Co., Ltd. (Guolian Fry), Zhanjiang Guotong Aquatic Co., Ltd. (Guotong) (collectively, the Guolian Companies).

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2011, through December 31, 2011.

Case History

The events that have occurred since the Department published the *Preliminary Determination* on June 4, 2013,² are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination in the Certain Frozen Warmwater Shrimp from the People’s Republic of China” (Decision Memorandum), which is hereby adopted by this notice.³

¹ The members of the Coalition of Gulf Shrimp Industries are: Bayou Shrimp Processors, Inc.; Bluewater Shrimp Company, Inc.; Carson & Co., Inc.; C.F. Gollott & Sons Seafood, Inc.; Dean Blanchard Seafood, Inc.; Dominick Seafood; Fisherman’s Reef Packing Plant; Golden Gulf Coast Pkg. Co., Inc. (and Gollott’s Oil Dock & Ice House); Graham Fisheries, Inc.; Graham Shrimp, Inc.; Gulf Crown Seafood Co., Inc.; Gulf Fish Inc.; Gulf Island Shrimp & Seafood, LLC; Gulf Pride Enterprises, Inc.; Hi-Seas of Dulac, Inc.; Indian Ridge Shrimp Co.; JBS Packing Co., Inc.; Lafitte Frozen Foods Corp.; M&M Shrimp (Biloxi Freezing and Processing); Ocean Springs Seafood Market, Inc.; Paul Piazza & Sons, Inc.; R.A. Lesso Brokerage Co., Inc.; Sea Pearl Seafood Co., Inc.; Smith and Sons Seafood; Tidelands Seafood Co., Inc.; Tommy’s Seafood; Vincent Piazza & Sons Seafood, Inc.; Wood’s Fisheries; Mariah Jade Shrimp Company, LLC; David Chauvin’s Seafood Company, LLC; and Rountree Enterprises, Inc. (dba Leonard & Sons Shrimp Co. and R&R Fisheries).

² See *Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) (*Preliminary Determination*).

³ Public versions of all business proprietary documents and all public documents are on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce building.

Scope Comments

On March 28, 2013, Petitioner asked the Department to clarify that the scope of this investigation does not include brine-frozen shrimp.⁴ We have addressed this request and comments thereon in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Certain Frozen Warmwater Shrimp from Ecuador, India, Indonesia, Malaysia, People’s Republic of China, Thailand, and Socialist Republic of Vietnam – Final Scope Memorandum Regarding Onboard Brine-Frozen Shrimp” (Scope Memorandum), which is hereby adopted by this notice.

Scope of the Investigation

The products covered by this investigation are certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size. For a complete description of the scope of the investigation, *see* Appendix I to this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Decision Memorandum, dated concurrently with this notice. A list of subsidy programs and the issues that parties have raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix II.

The Decision and Scope Memoranda are public documents and are on file electronically via IA ACCESS. In addition, complete versions of the Decision and Scope Memoranda can be

⁴ *See* Letter from Petitioner, “Countervailing Duty Investigation on Certain Frozen Warmwater Shrimp from the People’s Republic of China (C-570-989) – Request for Scope Clarification” (March 28, 2013).

accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed and the electronic versions of these memoranda are identical in content.

Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we have relied on facts available and have applied an adverse inference in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act) with regard to: (1) additional grants received by the Guolian Companies not addressed by the Department in the *Preliminary Determination*; (2) three grants reported at verification; (3) central government grants in connection with the Zhanjiang Guolian's *Penaeus Vannamei* Boone (aka White Shrimp) Processing Project; and (4) export buyers credits from China Export-Import Bank (China ExIm) Program. A full discussion of our decision to rely on AFA is presented in the Decision Memorandum under the section "Use of Facts Otherwise Available and Adverse Inferences."

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for the Goulian Companies. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an "all-others" rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Because we have calculated a rate for only the Goulian Companies, the rate for the Goulian Companies is the all others rate.

We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy Ad Valorem Rate
Zhanjiang Guolian Aquatic Products, Co., Ltd. (Guolian), Zhanjiang Guolian Feed Co., Ltd. (Guolian Feed), Zhanjiang Guolian Aquatic Fry Technology Co., Ltd. (Guolian Fry), Zhanjiang Guotong Aquatic Co., Ltd. (Guotong) (collectively, the Guolian Companies)	18.16 percent
All Others	18.16 percent

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of certain frozen warmwater shrimp from the PRC that were entered or withdrawn from warehouse, for consumption on or after June 4, 2013, the date of publication of the *Preliminary Determination* in the *Federal Register*. Pursuant to section 705(c)(1)(B)(ii) of the Act, we are directing CBP to continue suspending liquidation on all imports of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. CBP shall require a cash deposit equal to the subsidy rates indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty (CVD) order under section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all

privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

August 12, 2013__
Date

APPENDIX I

Scope of the Investigation

The products covered by this investigation are certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain “battered shrimp” (see below).

“Battered shrimp” is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

⁵ “Tails” in this context means the tail fan, which includes the telson and the uropods.

The products included in the scope of this investigation are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

APPENDIX II

List of Subsidy Programs and Issues in the Decision Memorandum

A. Programs Determined To Be Countervailable

1. Preferential Lending to Shrimp Producers by the Central Government and Province of Guangdong
2. Central Government, Provincial, and Municipal Grants Under the Famous Brands Program
3. Value-Added (VAT) Exemptions on Imports of Shrimp Fry
4. VAT Refunds for Foreign Invested Enterprises (FIEs) on Purchases of Chinese-Made Equipment
5. VAT and Import Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
6. Enterprise Income Tax Reduction for High and New Technology Enterprises
7. Tax Incentives for Enterprises Engaged in Aquaculture and Processing
8. Central Government Grants in Connection With the Zhanjiang Guolian's Penaeus Vannamei Boone (aka White Shrimp) Processing Project
9. Additional Grants Received by the Guolian Companies Not Addressed by the Department in the *Preliminary Determination*

B. Program Determined Not To Confer a Benefit During the POI

1. Grants Under the Guangdong Province Coastal Region Fishermen's Job Transferring Bill Fishery Industry Development Project Fund

C. Programs Determined To Be Not Used

1. Central Government Provision of Loan Guarantees at the Zhanjiang City Seafood Center
2. Export Sellers Credits from China Export-Import (Ex-Im) Bank
3. Guangdong Province Funds for Enterprise Outward Expansion
4. State Key Renovation Project Fund Program
5. Grants Under the Healthy Development of the Aquaculture Industry Program
6. Grants by the Central Government and the Zuzhou District Government in Connection with Construction of Fishery Industry Zones and Farms
7. Grants from the Huanhua City Government for Fry Breeding
8. Central Government Grants under the 2010 Aquatic Products Quality and Safety Supervision Program
9. Government Grants for Fishery Machinery and Equipment Purchases
10. Grants from Banfu County Government for Development of Breeding Stock
11. Two Free, Three Half Program
12. Export Oriented FIEs
13. Tax Refund for Profit Reinvestment in Export-Oriented Enterprises
14. Tax Incentives for FIEs in Special Economic Zones

15. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment
16. Central Government Provision of Rent for Less than Adequate Remuneration (LTAR) and Waiver of Management Fees at the Zhanjiang City Seafood Center
17. Central Government Provision of Cold Storage Services at the Zhanjiang City Seafood Center for LTAR
18. Export Credit Insurance from Sinosure

- Comment 1:** Application of the CVD Law to the PRC
- Comment 2:** Simultaneous Application of CVD and Non-Market Economy Measures
- Comment 3:** Proper “Cut-Off” Date to Apply in the Investigation
- Comment 4:** Whether the Department’s Application of Section 771B of the Act Improperly Attributes Subsidy Benefits to Shrimp Suppliers
- Comment 5:** Whether the “Substantially Dependent” Criterion under Section 771B(1) of the Act is Satisfied
- Comment 6:** Whether the “Limited Value” Criterion Under Section 771B(2) of the Act is Satisfied
- Comment 7:** Whether the Department Applied Section 771B of the Act in a Manner that Was Flawed
- Comment 8:** Denominator Used in Calculating the Net Subsidy Rate for Programs in Which the Department Attributed Benefits to Unaffiliated Farmers under Section 771B of the Act
- Comment 9:** Manner in Which the Department Conducted the 0.5 Percent Test When Attributing Benefits to Unaffiliated Farmers under Section 771B of the Act
- Comment 10:** Whether the Guolian Companies Benefited from Subsidies Received in Connection with the Zhanjiang City Seafood Center
- Comment 11:** Whether the Department Should Initiate Investigations of Petitioner’s Second Round of New Subsidy Allegations
- Comment 12:** Calculation of Guolian’s Tax Exemption Benefit Using Tax Payments Made During the POI
- Comment 13:** Whether the Department Made Ministerial Errors in the *Preliminary Determination* That Should be Corrected for the Final Determination
- Comment 14:** Whether the Department Should Countervail the Three Grants Reported at Verification and Whether the Department’s Refusal to Collect Benefit Information Regarding the Grants is Contrary to Past Practice
- Comment 15:** Treatment of Additional Grants Received by the Guolian Companies Not Addressed by the Department in the *Preliminary Determination*
- Comment 16:** Whether to Apply AFA With Regard to the Export Buyer’s Credits from the China Ex-Im Bank Program
- Comment 17:** Whether the Export Seller’s Credits from the China Ex-Im Bank Program is Countervailable
- Comment 18:** Whether the GOC Provided Preferential Lending to the Aquaculture Industry
- Comment 19:** Whether the Benchmark Used to Measure Benefits under the Preferential Lending to the Aquaculture Industry Program is Flawed

Comment 20: Whether Tax Benefits under Article 28 of the Enterprise Income Tax Law for High or New Technology Enterprises is Not Countervailable Because It is Not Specific

Comment 21: Whether the Grants under the GOC White Shrimp Processing Project are Specific

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